

11-14-2013

Hap Taylor & Sons v. Summerwind Partners Augmentation Record Dckt. 40514

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In the Supreme Court of the State of Idaho

HAP TAYLOR & SONS, INC., d/b/a KNIFE
RIVER, an Oregon corporation,

Plaintiff-Cross Respondent,

v.

L222-1 ID SUMMERWIND, LLC, a Nevada
limited liability corporation,

Defendant-Cross Appellant,

v.

IDAHO GOLF PARTNERS, INC.,

Intervenor-Respondent-Cross
Appellant.

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff- Counterdefendant- Cross
Defendant-Respondent,

v.

STANLEY CONSULTANTS, INC.,

Defendant-Counterclaimant-Cross
Claimant-Appellant,

and

INTEGRATED FINANCIAL ASSOCIATES,
INC., a Nevada corporation,

Defendant-Counterdefendant-
Cross Defendant-Respondent-Cross
Appellant,

and

GENEVA EQUITIES, LLC, an Idaho limited
liability company; TRADITIONAL

ORDER GRANTING MOTION TO
AUGMENT THE CLERK'S RECORD

Supreme Court Docket No. 40514-2012
Canyon County Nos. 2008-4251
(2008-4252) (2008-1132)

LAW CLERK

AUGMENTATION RECORD

ORDER GRANTING MOTION TO AUGMENT THE CLERK'S RECORD – Docket No.
40514-2012

SPRINKLERS AND LANDSCAPING, INC.,)
an Idaho corporation; DENNIS PHIPPS WELL)
DRILLING, INC., an Idaho corporation; and)
RIVERSIDE, INC., an Idaho corporation,)

Defendants-Counterdefendants-
Cross Defendants-Respondents,

and

IDAHO GOLF PARTNERS, INC.,

Intervenor-Respondent-Cross
Appellant.

A MOTION TO AUGMENT THE CLERK'S RECORD was filed by counsel for Respondent
Integrated Financial Associates, Inc. on November 13, 2013. Therefore, **good cause appearing,**

IT HEREBY IS ORDERED that Respondent Integrated Financial Associates, Inc.'s
MOTION TO AUGMENT THE CLERK'S RECORD be, and hereby is, **GRANTED** and the
augmentation record shall include the document listed below, file stamped copies of which
accompanied this Motion:

1. Order on Defendant IFA's Second Motion for Reconsideration and Plaintiff's Second
Motion for Summary Judgment, file-stamped December 23, 2011.

DATED this 19 day of November, 2013.

For the Supreme Court

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record

ORDER GRANTING MOTION TO AUGMENT THE CLERK'S RECORD – Docket No.
40514-2012

In the Supreme Court of the State of Idaho

HAP TAYLOR & SONS, INC., d/b/a KNIFE
RIVER, an Oregon corporation,

Plaintiff-Cross Respondent,

v.

SUMMERWIND PARTNERS, LLC, a Nevada
limited liability corporation,

Defendant-Cross Appellant,

v.

IDAHO GOLF PARTNERS, INC.,

Intervenor-Respondent-Cross
Appellant.

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff-Counterdefendant-Cross
Defendant-Respondent,

v.

STANLEY CONSULTANTS, INC.,

Defendant-Counterclaimant-Cross
Claimant-Appellant,

and

INTEGRATED FINANCIAL ASSOCIATES,
INC., a Nevada corporation,

Defendant-Counterdefendant-
Cross Defendant-Respondent-Cross
Appellant,

and

ORDER GRANTING MOTION TO
AUGMENT THE CLERK'S RECORD

Supreme Court Docket No. 40514-2012
Canyon County Nos. 2008-4251
(2008-4252) (2008-1132)

GENEVA EQUITIES, LLC, an Idaho limited
liability company; and RIVERSIDE, INC., an
Idaho corporation,
)
)
)
)
Defendants-Counterdefendants-
Cross Defendants-Respondents,
)
and
)
)
IDAHO GOLF PARTNERS, INC.,
)
)
Intervenor-Respondent-Cross
Appellant.
)
)
)
)

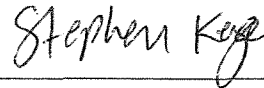
A MOTION TO AUGMENT THE CLERK'S RECORD was filed by counsel for Respondent Hap Taylor & Sons, Inc. on January 30, 2014. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent Hap Taylor & Sons, Inc.'s MOTION TO AUGMENT THE CLERK'S RECORD be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

1. Notice of Lodging of Order Granting Bankruptcy Stay Relief, file-stamped August 3, 2012.

DATED this 3rd day of February, 2014.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

COPY

DAVID T. KRUECK, ISB No. 6246
JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A.
225 North 9th Street, Suite 800
P.O. Box 1097
Boise, ID 83701-1617
Telephone: (208) 331-1170
Facsimile: (208) 331-1529
Email: dkrueck@idalaw.com

Attorneys for Plaintiff Hap Taylor & Sons, Inc. d/b/a Knife River

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

HAP TAYLOR & SONS, INC. d/b/a KNIFE
RIVER, an Oregon corporation doing business as
Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

FILED
A.M. P.M.

AUG - 3 2012

CANYON COUNTY CLERK
K CANO, DEPUTY

CONSOLIDATED
CASE NO. CV08-4251C

**NOTICE OF LODGING OF ORDER
GRANTING BANKRUPTCY STAY
RELIEF**

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho
limited liability company; et. al.,

Defendants.

COMES NOW Plaintiff Hap Taylor & Sons, Inc. d/b/a ("Knife River") by and through its attorneys of record, JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A., and hereby gives notice of lodging of the Order Granting Knife River Corporation – Northwest f/k/a Hap Taylor & Sons, Inc.'s Motion to Terminate Stay issued by the United States Bankruptcy Court for the District of Nevada on August 1, 2012. A copy of said Order is attached hereto as Exhibit "A" and incorporated herein by reference.

DATED this 3rd day of August, 2012.

JONES ♦ GLEDHILL ♦ FUHRMAN ♦ GOURLEY, P.A.

By: 

David T. Krueck
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of August, 2012, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

David E. Wishney
Attorney at Law
PO Box 837
Boise, ID 83701
*Attorney for L222-1 ID Summerwind, LLC;
L222-2 ID Summerwind, LLC; L222-3 ID
Summerwind, LLC; and Union Land
Company, LLC*

☒ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Richard B. Eismann
EISMANN LAW OFFICES
3016 Caldwell Blvd.
Nampa, ID 83651-6416
Attorney for Riverside, Inc.

☒ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Donald W. Lojek
LOJEK LAW OFFICES
PO Box 1712
Boise, ID 83701
Attorney for PMA, Inc.

☒ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Thomas E. Dvorak
Martin C. Hendrickson
Elizabeth M. Donick
GIVENS PURSLEY LLP
PO Box 2720
Boise, ID 83701
Attorney for Stanley Consultants, Inc.

☒ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

David E. Kerrick
Kerrick & Associates
PO Box 44
Caldwell, ID 83606
*Attorneys for Michael W. Benedick and
Carol L. Benedick*

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☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech Street
Caldwell, ID 83605
Pro Se Defendant

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☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Michael O. Roe
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701
*Attorneys for Integrated Financial Associates,
Inc., Geneva Equities, LLC, and Certain Other
Named Defendants*

☒ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

Rebecca A. Rainey
Rebecca A. Rainey, P.A.
2627 West Idaho Street
Boise, ID 83702
*Attorneys for Integrated Financial Associates,
Inc., Geneva Equities, LLC, and Certain Other
Named Defendants*

☒ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery

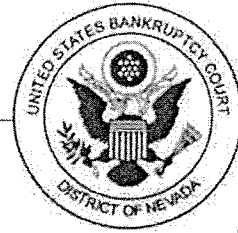


David T. Krueck

EXHIBIT A

[Signature]

Honorable Linda B. Riegle
United States Bankruptcy Judge



Lodged 7/18/12

Entered on Docket
August 01, 2012

McMAHON LAW OFFICES, LTD.
Brian M. McMahon, Esq.
Nevada State Bar No. 927
3715 Lakeside Drive, Suite A
Reno, Nevada 89509
(775)348-2701
Attorneys for Knife River Corporation – Northwest f/k/a
Hap Taylor & Sons, Inc.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In the matter of:

Integrated Financial Associates, Inc.,
Debtor,

Case No. BK-S-11-13537-LBR

Chapter: 11

ORDER GRANTING KNIFE RIVER
CORPORATION – NORTHWEST
F/K/A HARP TAYLOR & SONS, INC'S
MOTION TO TERMINATE STAY

Hearing Date: July 18, 2012
Hearing Time: 1:30 p.m.
Est. Hearing: 30 minutes

Knife River Corporation – Northwest f/k/a Hap Taylor & Sons, Inc. ("Knife River"), by and through its counsel of record Brian McMahon, of McMahon Law Offices, Ltd., having filed its *Motion to Terminate Stay*, the Motion and Hearing having been properly noticed, was heard

1 in open court on July 18, 2012. The Court having read and reviewed the pleadings and
2 documents on file herein and no oppositions filed to Knife River's *Motion to Terminate Stay*, and
3 good cause appearing, the Court hereby orders the following:

4 1. Knife River Corporation – Northwest's *Motion to Terminate Stay* is GRANTED

5 2. The scope is the lift of the stay to the real property located in Canyon County,
6 Idaho, commonly referred to as the Summerwind and Orchard Hills Subdivisions, as described in
7 Exhibit A to Document No. 625, Knife River's *Motion to Terminate Stay and Rule 4001.2*
8 *Notice*, filed with this Court.

9 3. Knife River may proceed with its State Court remedies with respect to the specific
10 real property set forth in Exhibit A.

11 Submitted by:

12 McMAHON LAW OFFICES, LTD.

13
14 By: 

15 Brian M. McMahon, Esq.

16 Attorneys for Creditor Knife River

ALTERNATIVE METHOD RE: RULE 9021

1 In accordance with Local Rule 9021, counsel submitting this document certifies that the
2 order accurately reflects the court's ruling and that:

3 ☐ The Court has waived the requirement set forth in LR 9021(b)(1).

4 X No party appeared at the hearing or filed an objection to the motion.

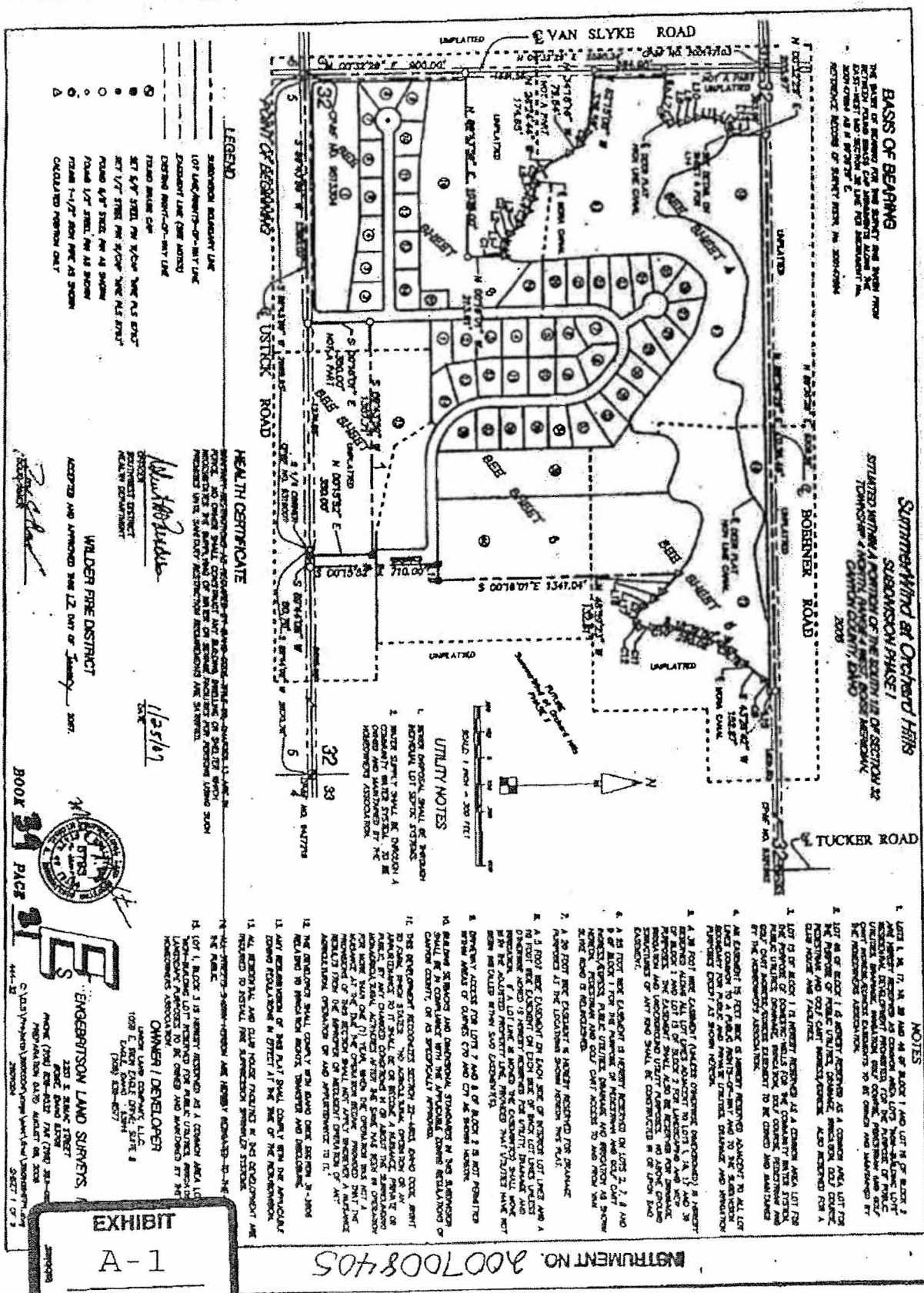
5
6 ☐ I have delivered a copy of this proposed order to all counsel who appeared at the
7 hearing, any unrepresented parties who appeared at the hearing, and each has
8 approved or disapproved the order, or failed to respond, as indicated below [list
each party and whether the party has approved, disapproved or failed to respond
to the documents]:

9
10 ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this
11 order with the motion pursuant to LR9014(g), and that no party has objected to
12 the form or content of the order.
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EXHIBIT A

All of the real property described in the recorded plat for SummerWind at Orchard Hills Subdivision Phase I attached hereto, and fully incorporated herein by this reference, as Exhibit "A-1," filed in Book 39 of Plats at Page 21 records of Canyon County, Idaho, recorded on February 2, 2007, as Instrument No. 2007008405; EXCLUDING Lots 1 and 9 in Block 2 of the Subdivision.

All of the real property described in the recorded plat for SummerWind at Orchard Hills Subdivision Phase II attached hereto, and fully incorporated herein by this reference, as "Exhibit A-2," filed in Book 39 of Plats at Page 22 records of Canyon County, Idaho, recorded on February 2, 2007, as Instrument No. 2007008406; EXCLUDING Lots 48, 52 and 62 in Block 1 of the Subdivision and Lots 8, 10, 17 and 20 in Block 4 of the Subdivision.



SummerWind at Orchard Hills
 SUBDIVISION PHASE I
 SITUATED WITHIN A PORTION OF THE SOUTH 1/2 OF SECTION 12
 TOWNSHIP 1 NORTH, RANGE 4 WEST, ROSS AERIAL
 CANTON COUNTY, OHIO
 2005

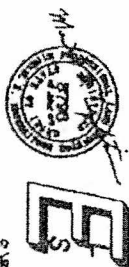
LINE	LENGTH	BEARING
1	36.14	N 0° 0' 0" E
2	31.14	N 0° 0' 0" E
3	31.14	N 0° 0' 0" E
4	31.14	N 0° 0' 0" E
5	31.14	N 0° 0' 0" E
6	31.14	N 0° 0' 0" E
7	31.14	N 0° 0' 0" E
8	31.14	N 0° 0' 0" E
9	31.14	N 0° 0' 0" E
10	31.14	N 0° 0' 0" E
11	31.14	N 0° 0' 0" E
12	31.14	N 0° 0' 0" E
13	31.14	N 0° 0' 0" E
14	31.14	N 0° 0' 0" E
15	31.14	N 0° 0' 0" E
16	31.14	N 0° 0' 0" E
17	31.14	N 0° 0' 0" E
18	31.14	N 0° 0' 0" E
19	31.14	N 0° 0' 0" E
20	31.14	N 0° 0' 0" E

CLUMP RADII	DELTA	LENGTH	CHORD BEARING	CHORD LENGTH
C1	36.14	36.14	N 0° 0' 0" E	36.14
C2	31.14	31.14	N 0° 0' 0" E	31.14
C3	31.14	31.14	N 0° 0' 0" E	31.14
C4	31.14	31.14	N 0° 0' 0" E	31.14
C5	31.14	31.14	N 0° 0' 0" E	31.14
C6	31.14	31.14	N 0° 0' 0" E	31.14
C7	31.14	31.14	N 0° 0' 0" E	31.14
C8	31.14	31.14	N 0° 0' 0" E	31.14
C9	31.14	31.14	N 0° 0' 0" E	31.14
C10	31.14	31.14	N 0° 0' 0" E	31.14
C11	31.14	31.14	N 0° 0' 0" E	31.14
C12	31.14	31.14	N 0° 0' 0" E	31.14
C13	31.14	31.14	N 0° 0' 0" E	31.14
C14	31.14	31.14	N 0° 0' 0" E	31.14
C15	31.14	31.14	N 0° 0' 0" E	31.14
C16	31.14	31.14	N 0° 0' 0" E	31.14
C17	31.14	31.14	N 0° 0' 0" E	31.14
C18	31.14	31.14	N 0° 0' 0" E	31.14
C19	31.14	31.14	N 0° 0' 0" E	31.14
C20	31.14	31.14	N 0° 0' 0" E	31.14

LINE	LENGTH	BEARING
21	36.14	N 0° 0' 0" E
22	31.14	N 0° 0' 0" E
23	31.14	N 0° 0' 0" E
24	31.14	N 0° 0' 0" E
25	31.14	N 0° 0' 0" E
26	31.14	N 0° 0' 0" E
27	31.14	N 0° 0' 0" E
28	31.14	N 0° 0' 0" E
29	31.14	N 0° 0' 0" E
30	31.14	N 0° 0' 0" E
31	31.14	N 0° 0' 0" E
32	31.14	N 0° 0' 0" E
33	31.14	N 0° 0' 0" E
34	31.14	N 0° 0' 0" E
35	31.14	N 0° 0' 0" E
36	31.14	N 0° 0' 0" E
37	31.14	N 0° 0' 0" E
38	31.14	N 0° 0' 0" E
39	31.14	N 0° 0' 0" E
40	31.14	N 0° 0' 0" E
41	31.14	N 0° 0' 0" E
42	31.14	N 0° 0' 0" E
43	31.14	N 0° 0' 0" E
44	31.14	N 0° 0' 0" E
45	31.14	N 0° 0' 0" E
46	31.14	N 0° 0' 0" E
47	31.14	N 0° 0' 0" E
48	31.14	N 0° 0' 0" E
49	31.14	N 0° 0' 0" E
50	31.14	N 0° 0' 0" E

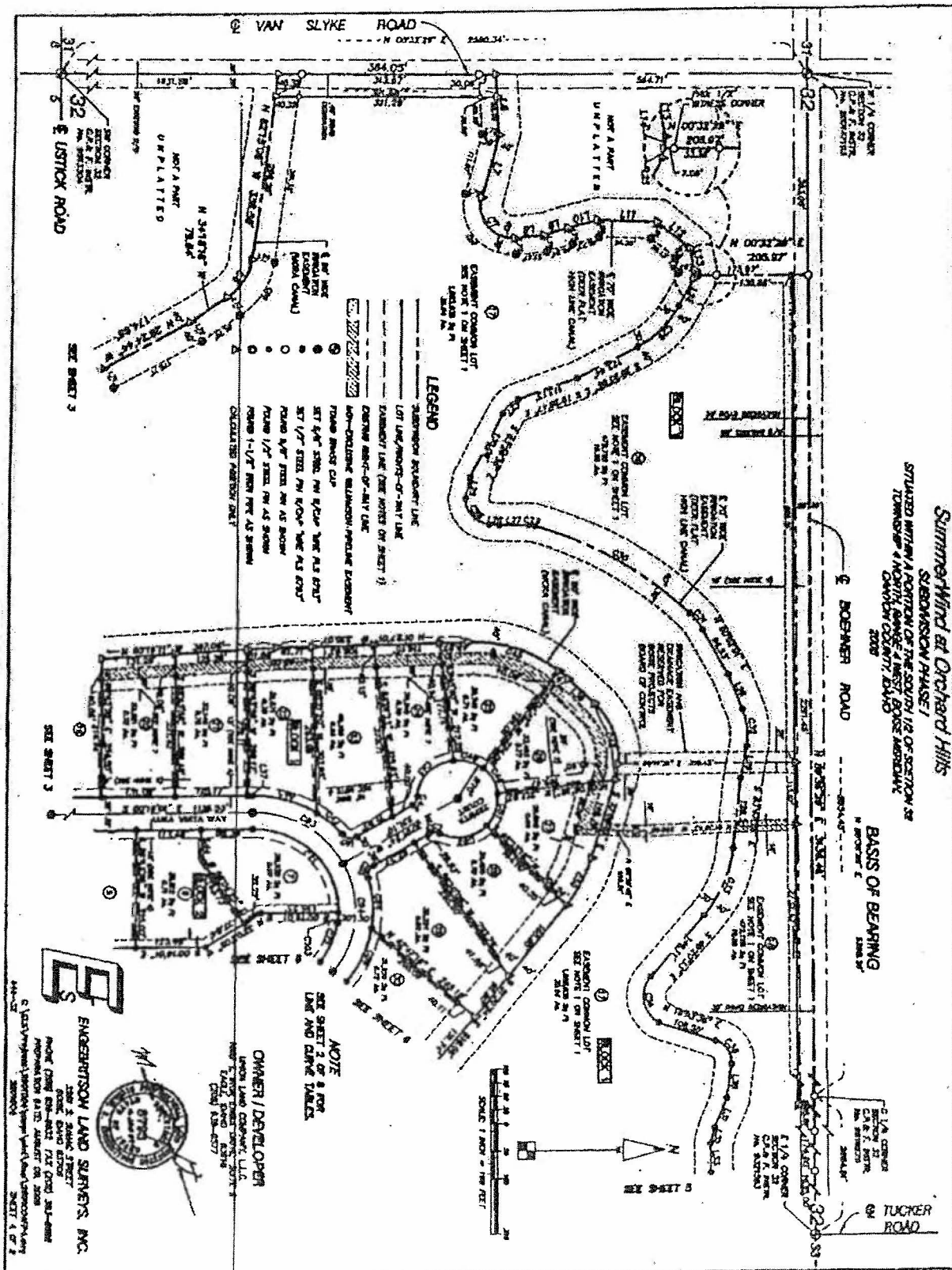
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C22	31.14	31.14	N 0° 0' 0" E	31.14
C23	31.14	31.14	N 0° 0' 0" E	31.14
C24	31.14	31.14	N 0° 0' 0" E	31.14
C25	31.14	31.14	N 0° 0' 0" E	31.14
C26	31.14	31.14	N 0° 0' 0" E	31.14
C27	31.14	31.14	N 0° 0' 0" E	31.14
C28	31.14	31.14	N 0° 0' 0" E	31.14
C29	31.14	31.14	N 0° 0' 0" E	31.14
C30	31.14	31.14	N 0° 0' 0" E	31.14
C31	31.14	31.14	N 0° 0' 0" E	31.14
C32	31.14	31.14	N 0° 0' 0" E	31.14
C33	31.14	31.14	N 0° 0' 0" E	31.14
C34	31.14	31.14	N 0° 0' 0" E	31.14
C35	31.14	31.14	N 0° 0' 0" E	31.14
C36	31.14	31.14	N 0° 0' 0" E	31.14
C37	31.14	31.14	N 0° 0' 0" E	31.14
C38	31.14	31.14	N 0° 0' 0" E	31.14
C39	31.14	31.14	N 0° 0' 0" E	31.14
C40	31.14	31.14	N 0° 0' 0" E	31.14
C41	31.14	31.14	N 0° 0' 0" E	31.14
C42	31.14	31.14	N 0° 0' 0" E	31.14
C43	31.14	31.14	N 0° 0' 0" E	31.14
C44	31.14	31.14	N 0° 0' 0" E	31.14
C45	31.14	31.14	N 0° 0' 0" E	31.14
C46	31.14	31.14	N 0° 0' 0" E	31.14
C47	31.14	31.14	N 0° 0' 0" E	31.14
C48	31.14	31.14	N 0° 0' 0" E	31.14
C49	31.14	31.14	N 0° 0' 0" E	31.14
C50	31.14	31.14	N 0° 0' 0" E	31.14

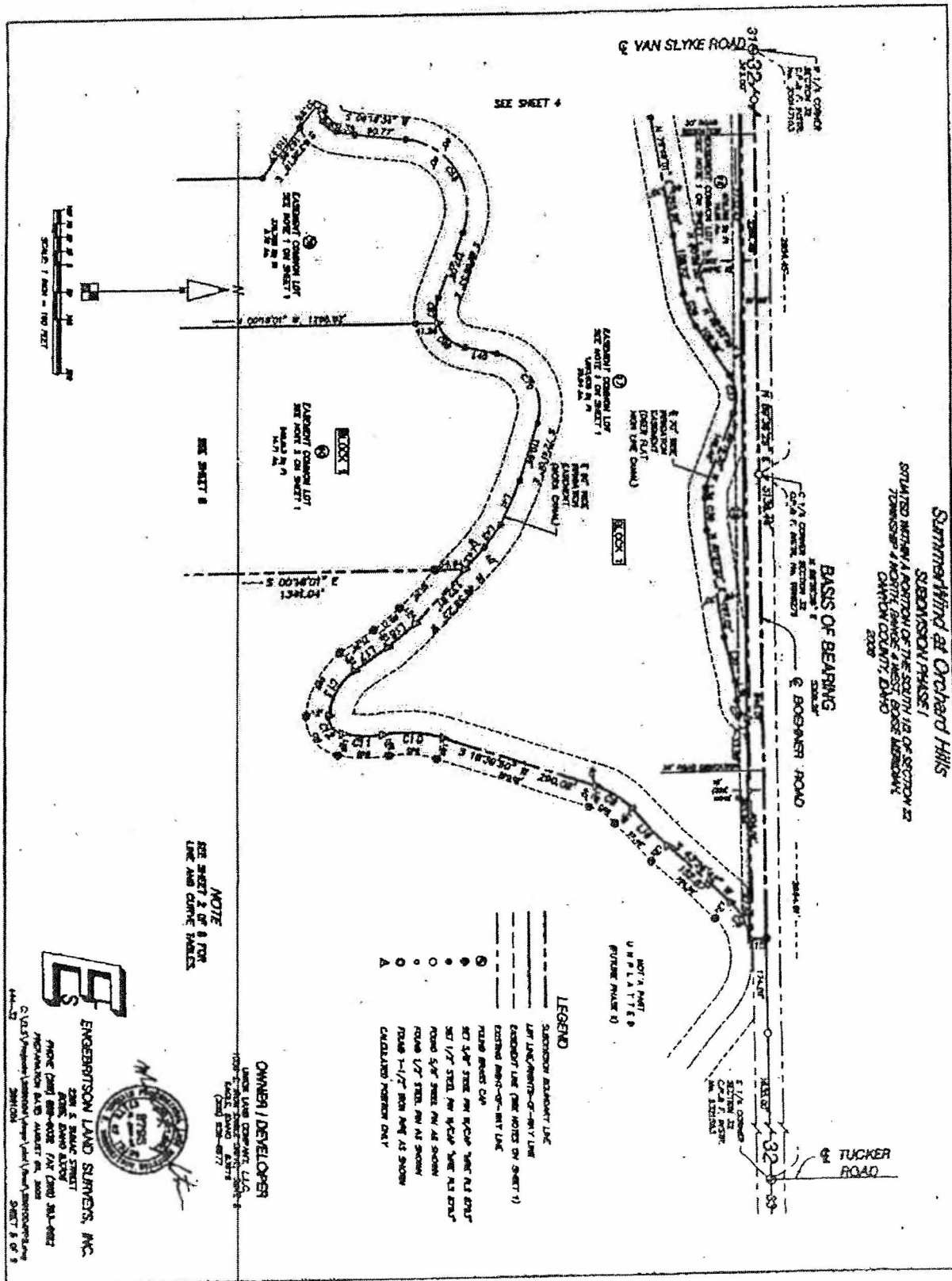
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C52	31.14	31.14	N 0° 0' 0" E	31.14
C53	31.14	31.14	N 0° 0' 0" E	31.14
C54	31.14	31.14	N 0° 0' 0" E	31.14
C55	31.14	31.14	N 0° 0' 0" E	31.14
C56	31.14	31.14	N 0° 0' 0" E	31.14
C57	31.14	31.14	N 0° 0' 0" E	31.14
C58	31.14	31.14	N 0° 0' 0" E	31.14
C59	31.14	31.14	N 0° 0' 0" E	31.14
C60	31.14	31.14	N 0° 0' 0" E	31.14
C61	31.14	31.14	N 0° 0' 0" E	31.14
C62	31.14	31.14	N 0° 0' 0" E	31.14
C63	31.14	31.14	N 0° 0' 0" E	31.14
C64	31.14	31.14	N 0° 0' 0" E	31.14
C65	31.14	31.14	N 0° 0' 0" E	31.14
C66	31.14	31.14	N 0° 0' 0" E	31.14
C67	31.14	31.14	N 0° 0' 0" E	31.14
C68	31.14	31.14	N 0° 0' 0" E	31.14
C69	31.14	31.14	N 0° 0' 0" E	31.14
C70	31.14	31.14	N 0° 0' 0" E	31.14
C71	31.14	31.14	N 0° 0' 0" E	31.14
C72	31.14	31.14	N 0° 0' 0" E	31.14
C73	31.14	31.14	N 0° 0' 0" E	31.14
C74	31.14	31.14	N 0° 0' 0" E	31.14
C75	31.14	31.14	N 0° 0' 0" E	31.14
C76	31.14	31.14	N 0° 0' 0" E	31.14
C77	31.14	31.14	N 0° 0' 0" E	31.14
C78	31.14	31.14	N 0° 0' 0" E	31.14
C79	31.14	31.14	N 0° 0' 0" E	31.14
C80	31.14	31.14	N 0° 0' 0" E	31.14

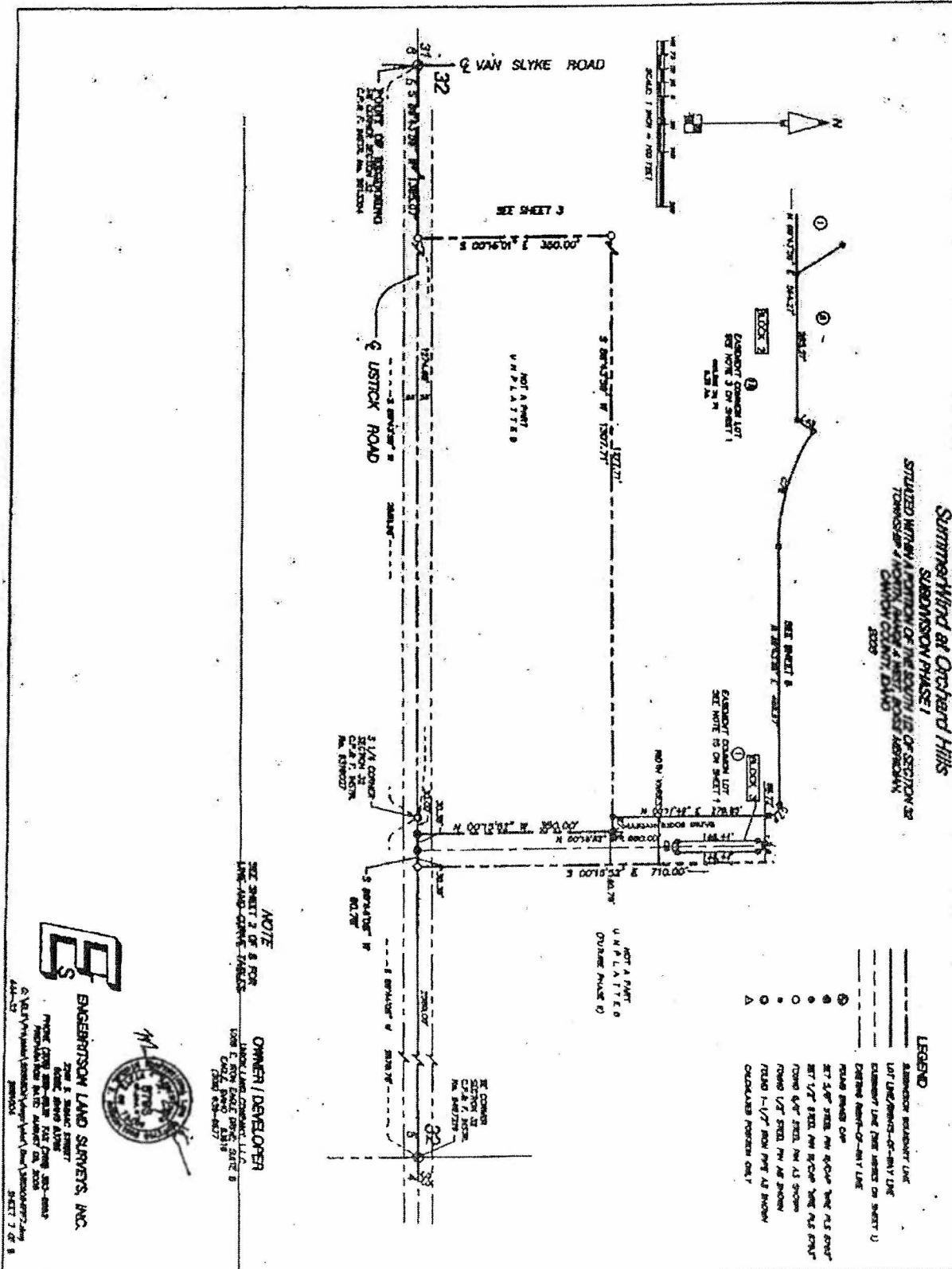


OWNER / DEVELOPER
 SUMMERWIND DEVELOPMENT, LLC
 10000 SUMMERWIND DRIVE
 (200) 555-8877

ENGINEER / LAND SURVEYOR, INC.
 200 S. MAIN STREET
 COLUMBUS, OHIO 43215
 PHONE: (614) 462-8877 FAX: (614) 462-8878
 INFORMATION DATE: AUGUST 08, 2008
 © 2008 Surveying & Mapping, Inc. All Rights Reserved
 SHEET 2 OF 2







COUNTY RECORDERS CERTIFICATE

52% of depend on
and country
intercountry leaders
FILE FOR RECORD AT THE REQUEST OF
AT _____ OFFICE, K. HAN
DATE: _____
DI-OF-FOOD RECORDS
DDM/JT: _____
FIC. 81.00

1. MORTGAGE RECONSTRUCTION, OR MORTGAGE REFINANCE, THAT IS A REFINANCED LAMB
FUNCTION, LOCATED BY THE STATE OF CALIFORNIA, AND THAT THE PLAT IS DISCLOSED
IN THE CERTIFICATE OF CORNER, HAS BEEN REFINANCED IN AN ACTUAL FIELD SURVEY WORK
ON THE CHAIN UNDER THE DIRECT SUPERVISION OF THE PLAT AGENT, AND THE
RECORDING OF THE PLAT RECORDS, AND IS IN CONFORMANCE WITH THE STATE OF CALIFORNIA
CODE RELATING TO PLATS AND RECORDS.



PLEASE DO NOT REMOVE ANYTHING FROM THIS FILE. ANYTHING REMOVED FROM THIS FILE WILL BE CONSIDERED A VIOLATION OF THE FEDERAL BUREAU OF INVESTIGATION ACT. ANYTHING REMOVED FROM THIS FILE WILL BE CONSIDERED A VIOLATION OF THE FEDERAL BUREAU OF INVESTIGATION ACT.



THIS IS TO CERTIFY THAT THE UNDERSIGNED HAS CHECKED THE RECORDS OF THE
AND DETERMINED THAT IT CORRELATES WITH THE LAWS OF THE STATE OF IOWA
• RELATIVE TO PLATS AND RECORDS.

11/6/67
OK
J. E. K. Jones 98/15 2607
DARTON COUNTY SHERIFF'S
OFFICE

DEED TO CERTIFY THAT THE UNDERSIGNED, FOR THE RECORDERS OF LC, DO-1202, DOES HEREBY CERTIFY THAT ANY AND ALL CURRENT AND/OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY HAVE BEEN PAID IN FULL. THE CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

Theresa D. Boyd by James Boyd
CANTON COUNTY RECORDER

RECEIVED AND APPROVED FOR THE 18th DAY OF SEPTEMBER 2008 7

Customer: Dhanu Sharma

ACCEPTED AND AGREED THAT I MAY OF FIELD. 2004

Handwritten: Handwritten Name
CLUB



ENGERSTROM LAND SURVEYS, INC.
 2225 S. BALK STREET
 PORT ORMOY ALASKA
 PHONE (707) 836-4412 FAX (707) 831-0386
 PRODUCTION DATE: AUGUST 04, 2006
 © 2006 Engerstrom Land Surveys, Inc. All Rights Reserved.
 2225 S. BALK STREET
 PORT ORMOY ALASKA

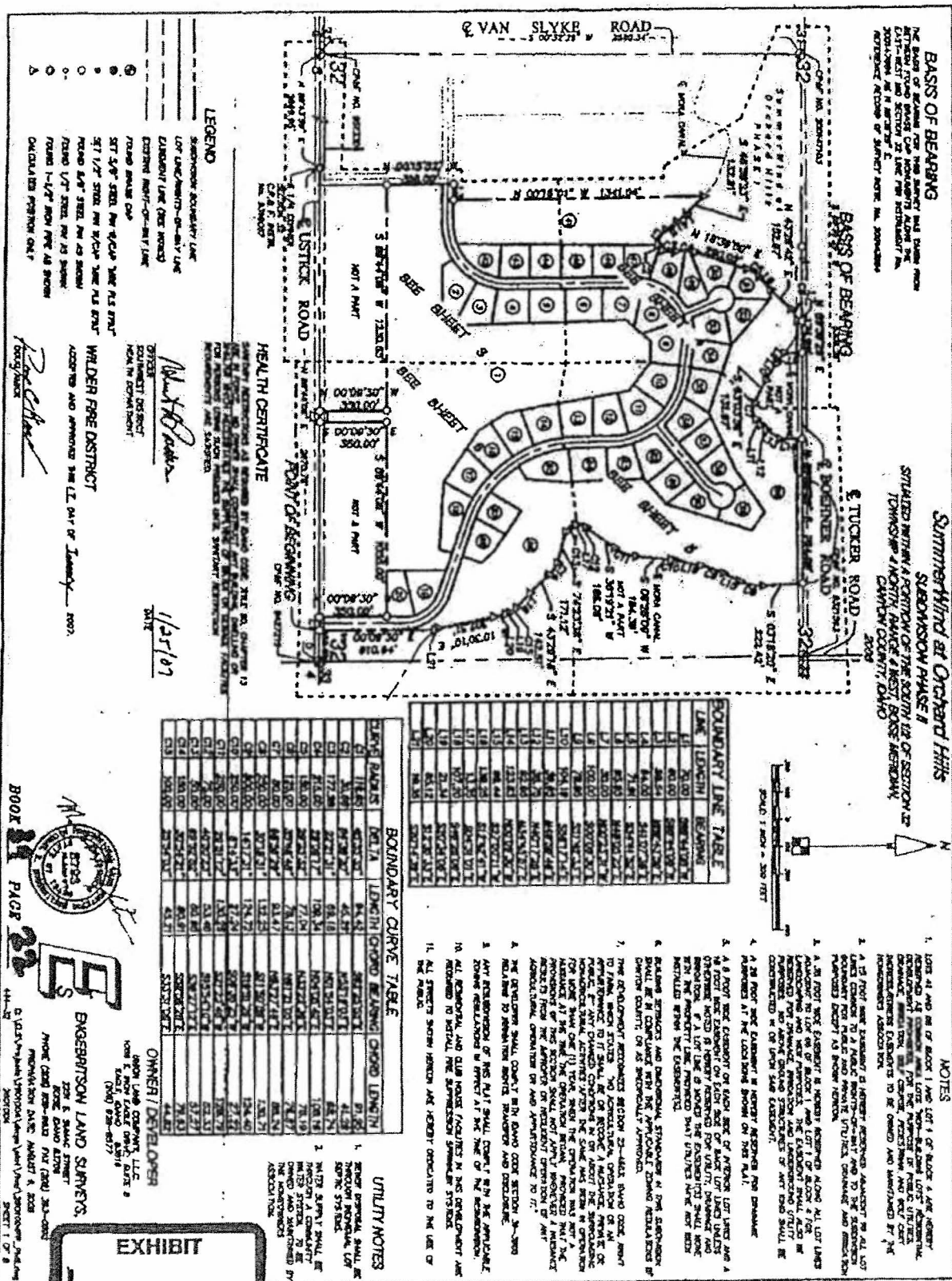
2007008405

RECORDED

2007 FEB 2 PM 2 25

WILLIAM H. ROAST
CANYON CNTY RECORDER

BY *[Signature]*



SummerWind at Orchard Hills
SIPPOCKS PLACE #

SITUATED WITHIN A PORTION OF THE SOUTH 1/2 OF SECTION 32,
TOWNSHIP 4 NORTH, RANGE 4 WEST, BOISE MERIDIAN,
CANYON COUNTY, IDAHO
2008

Date		Page		Index	
Year	Month	Page	Index	Year	Month
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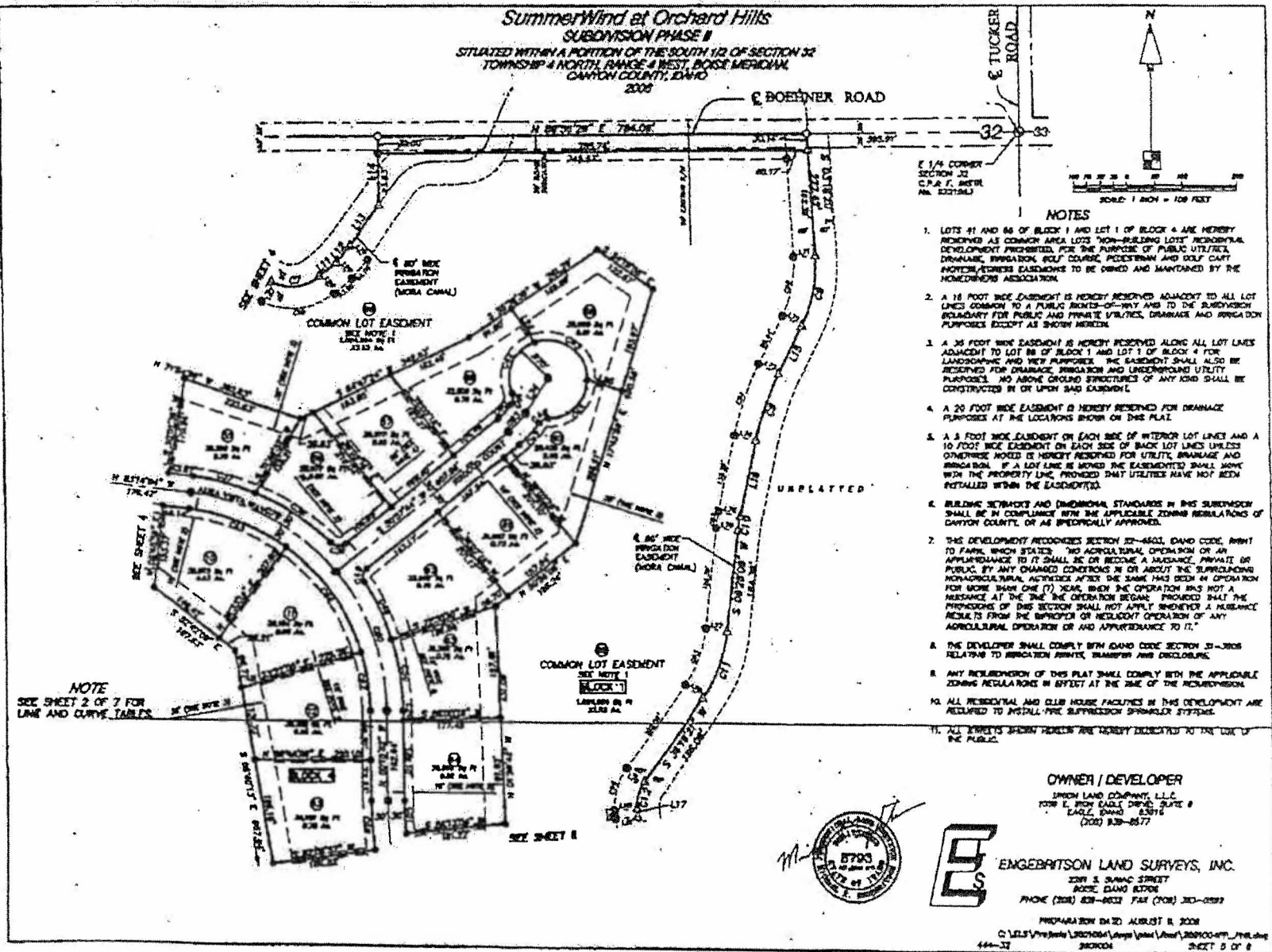
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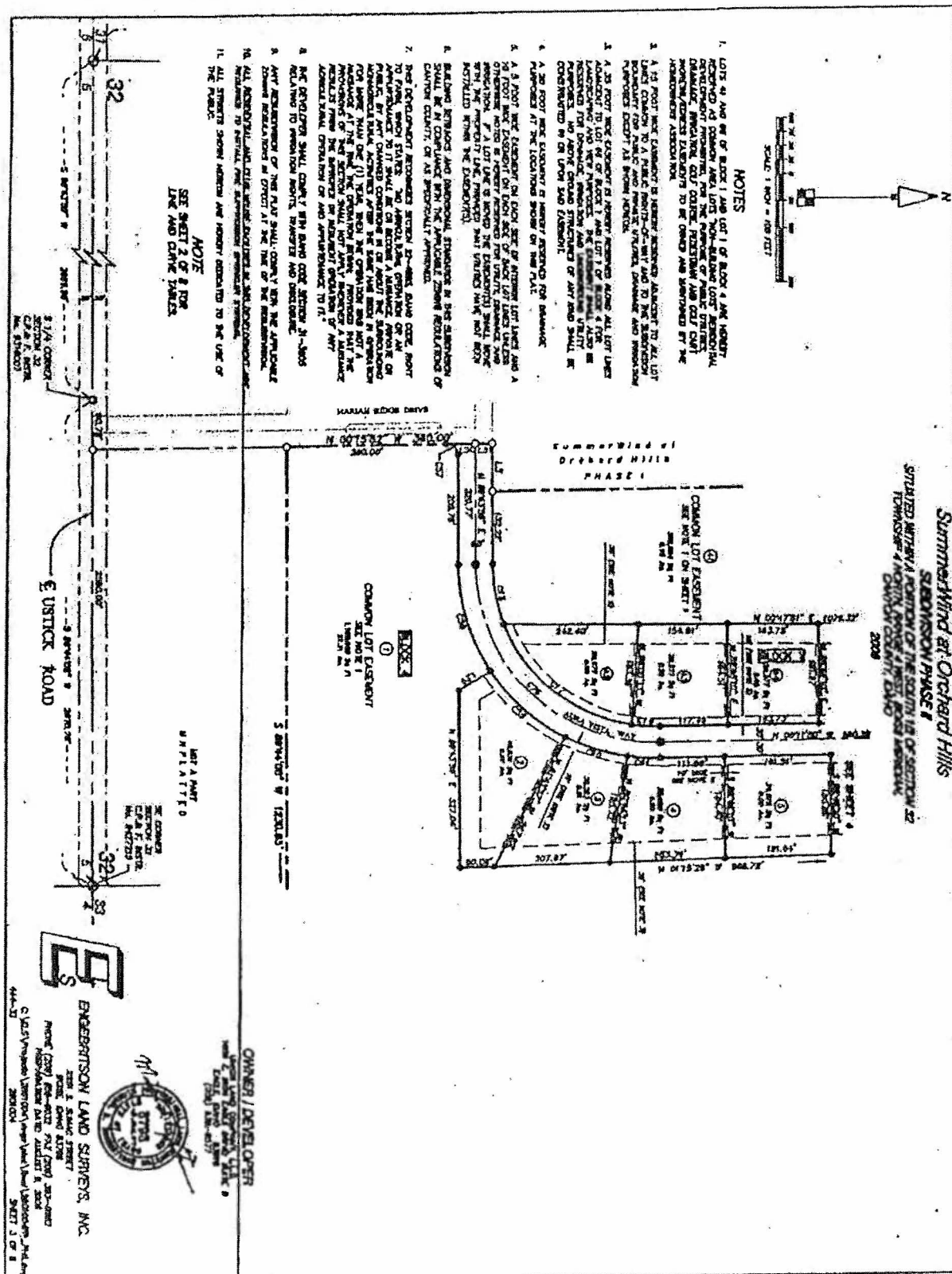
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BOUNDARY CURVE TABLE				
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C2	31.49	84.3822	45.78	51.28
C3	177.85	24.2121	69.19	50.5213
C4	214.00	22.0817	108.34	50.1152
C5	180.00	22.2535	77.64	78.58
C6	128.00	20.9448	78.13	51.2273
C7	40.00	84.3248	81.62	50.7120
C8	250.00	20.0121	152.63	50.7242
C9	353.00	14.1728	134.75	51.0028
C10	350.00	14.4327	71.54	50.3828
C11	254.00	20.2121	135.81	51.1545
C12	75.00	40.2022	63.49	51.1545
C13	40.00	84.3248	81.62	51.2273
C14	150.00	20.9448	81.62	50.7120
C15	104.00	22.2535	45.78	51.28

SECONDARY LINE TABLE		
LINE	LOADING	RE-LOADING
1	50.00	50.00
2	50.00	50.00
3	50.00	50.00
4	50.00	50.00
5	50.00	50.00
6	50.00	50.00
7	50.00	50.00
8	50.00	50.00
9	50.00	50.00
10	50.00	50.00
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12	50.00	50.00
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14	50.00	50.00
15	50.00	50.00
16	50.00	50.00
17	50.00	50.00
18	50.00	50.00
19	50.00	50.00
20	50.00	50.00
21	50.00	50.00
22	50.00	50.00
23	50.00	50.00
24	50.00	50.00
25	50.00	50.00
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40	50.00	50.00
41	50.00	50.00
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43	50.00	50.00
44	50.00	50.00
45	50.00	50.00
46	50.00	50.00
47	50.00	50.00
48	50.00	50.00
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54	50.00	50.00
55	50.00	50.00
56	50.00	50.00
57	50.00	50.00
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98	50.00	50.00
99	50.00	50.00
100	50.00	50.00

[illegible]





[illegible]

STATED WITHIN A PORTION OF THE SOUTH 1/2 OF SECTION 26
TOWNSHIP 4 NORTH, RANGE 4 WEST, BODE MERIDIAN
CANYON COUNTY, IDAHO

OWNERS CERTIFICATE CONTINUED

[illegible]

STATE OF OHIO) ss
ADAM COUNTY)

INSTRUMENT NUMBER _____

PAID FOR RECORD AT THE REQUEST OF
AT _____
BY OF _____

DI-OFFICE RECORD _____

ADULTS: _____


AGE: 64.00

[illegible][illegible]

LESTER D. SANDROVICH, LLC
571 UNION LAID COMPANY, LLC, 3017 WILSON
ST. WILSON, VA 22197
AGENT MOD/LOR, A/FORCED AGENT

LESTER D. SANDROVICH, LLC
571 UNION LAID COMPANY, LLC, 3017 WILSON
ST. WILSON, VA 22197
AGENT MOD/LOR, A/FORCED AGENT

Robert A. Baker
LTD-20 MANHATTAN, LLC
871 LEXINGTON AVENUE, NYC POLICE DEPT.
ROBERT BAKER, AUTHORIZED AGENT

E  **ENGINEERING LAND SURVEYORS, INC.**
2225 S. DAVIS STREET
SUITE 200
MORGAN HILL, CALIF. 95037
408-937-1100
FAX 408-937-1101
MEMBERSHIP AND EDUCATION
P.O. BOX 10000
MORGAN HILL, CALIF. 95037
408-937-1100
FAX 408-937-1101

CERTIFICATE OF THE CANYON COUNTY TREASURER

THIS IS TO CERTIFY THAT THE UNDERSIGNED, FOR THE REQUIREMENTS OF I.C. 20-1-10, DOES NOT CERTIFY THAT ANY AND ALL CANYON COUNTY OR NON-CANYON COUNTY PROPERTY TAXES FOR THE PROPERTY HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT NINETY (90) DAYS ONLY.

Tracey, David Louis
CANYON COUNTY, IDAHO

1025-107

CERTIFICATE OF CANYON COUNTY PLANNING AND
ZONING COMMISSION
ADOPTED AND APPROVED THIS 21st DAY of January, 2004.

Diana Williams
OWNER

60472

Summer Wind at Orchard Hills
SUSANSON PHASE II
SITUATED WITHIN A PORTION OF THE SOUTH 1/2 OF SECTION 32
TOWNSHIP 4 NORTH, RANGE 4 WEST, BOULDER COUNTY,
COLORADO CONTAINING
2008

CERTIFICATE OF THE CANYON COUNTY SHERIFF

CERTIFICATE OF THE CANYON COUNTY SUPERVISOR

11/6/07
CLAYTON COUNTY SHERIFF
DAVID R. KENNEDY JR. 2659

APPROVAL OF GOLDEN GATE HIGHWAY DISTRICT NO. 3

COLONY CAME NEARLY DISTINCT NO. 3 FOR NORTHERN ACIDIC TREE FLAT, AND REDUCED PUBLIC STREET, FORMERLY AND NORTH-OF-MAIN IS NOT DETECTED BY THE FLAT, IN ACTIVITY WITH THE PROCEEDINGS OF ROAD CODE 30-1273 ON THE 31ST DAY OF

David L. ...
DAVID LINCOLN OLIVERSON OF THE BUREAU
GOLDEN STATE MOUNTAIN DISTRICT NO. 3

CERTIFICATE OF CANTON COUNTY COMMISSIONERS
ACCEPTED AND PAID 2.04.2024

ACCEPTED AND RECORDED MAY 3 1917 OF FID

2-5-07
DATE

250



COUNTY RECORDERS CERTIFICATE

STATE OF IDAHO ss
ADA COUNTY)
NATHANIEL MATHIAS _____
FILED FOR RECORD AT THE OFFICE OF
AT _____ CLERK AND
DATE _____
D-070000 KIDNAPOR _____
DEPUTY _____
JTB:ALB

OWNER / DEVELOPER

STANLEY MORRIS, INC.
4400 E. 9TH AVE. STE. 10
DENVER, CO 80202

ENGELBARTSON LAND SURVEYS, INC.

APPROVAL DATE AUGUST 8, 2009
C:\Users\james.l.sutton\Desktop\james.l.sutton\2009-08-08
444-32 20070304 3-SEP 4 OF 8

2007008406

RECORDED

2007 FEB 2 PM 2 27

WILLIAM H. HEST
CANYON COUNTY RECORDER

BY *[Signature]* 1/28/07

for a porch added on to that house. 93 P. at 766. Morrison completed the house on January 16, 1905 and Valley Lumber billed Morrison for all the lumber he used in constructing the house on January 20, 2005. *Id.* The owner rented the house near the time of completion and subsequently entered into another contract with Morrison, on or about March 13, 1905, for the construction of the porch. *Id.* at 767. Morrison then ordered approximately twenty-five dollars worth of lumber from Valley Lumber. *Id.* After a bench trial, the court entered judgment in favor of Valley Lumber. *Id.* at 766.

The property owner, Driessel, appealed the trial court's determination. While the Court acknowledged that the "contract for the porch was not made until about 59 days after the respondent had furnished the last material for the construction of the house" and noting that Morrison testified to existence of separate contracts for construction of the porch and house, it concluded that there "is no positive testimony in the record showing that the respondent had information that the house and porch were constructed under separate contracts." *Id.* at 767.

Similarly, here, IFA has not adduced sufficient evidence to support a conclusion by the court that Knife River had information that ELL had separate contracts with Union Land for construction of the streets and cart paths.

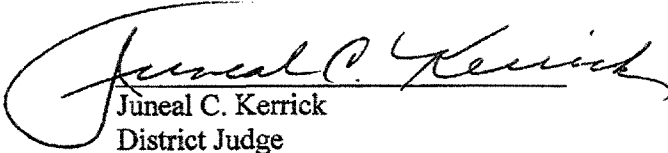
IV. Conclusion

In light of the foregoing, on reconsideration, Knife River's Motion for Partial Summary Judgment determining that its lien is superior to IFA's interest in the property is granted.

IT IS SO ORDERED.

ORDER ON DEFENDANT IFA'S MOTION FOR RECONSIDERATION

Dated this 26th day of October, 2010.


Juneal C. Kerrick
District Judge

ORDER ON DEFENDANT IFA'S MOTION FOR RECONSIDERATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon the following, either by U.S. Mail, first class postage prepaid; by hand delivery; by courthouse basket; or by facsimile copy:

David T. Krueck
Trout Jones Gledhill Fuhrman, P.A.
225 N. 9th St., Suite 800
P.O. Box 1097
Boise, Idaho 83701

Michael O. Roe
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 South Capitol Boulevard, 10th Floor
P.O. Box 829
Boise, Idaho 83701

William L. Smith
Smith Horras, PA
5561 N. Glenwood St., Suite B
P.O. Box 140857
Boise, Idaho 83714

Thomas E. Dvorak
Givens Pursley, LLP
P.O. Box 2720
Boise, Idaho 83701

David E. Wishney
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P.O. Box 837
Boise, Idaho 83701

Samuel A. Diddle
Eberle Berlin Kading Turnbow & McKlvee, Chtd.
P.O. Box 1368
Boise, Idaho 83701-1368

ORDER ON DEFENDANT IFA'S MOTION FOR RECONSIDERATION

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Elam & Burke, P.A.
251 East Front Street, Suite 300
P.O. Box 1539
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Frederick A. Batson
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Lojek Law Offices Chtd.
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P.O. Box 1712
Boise, Idaho 83701

David E. Kerrick
Kerrick & Associates
1101 Blaine St.
P.O. Box 44
Caldwell, Idaho 83606

Tom Mehiel, President
Valley Hydro, Inc.
1904 E. Beech St.
Caldwell, Idaho 83605

OCT 26 2010
Dated this _____ day of October, 2010.

WILLIAM H. HURST
Clerk of the District Court

by B. PAYNE
Deputy Clerk

ORDER ON DEFENDANT IFA'S MOTION FOR RECONSIDERATION

In the Supreme Court of the State of Idaho

HAP TAYLOR & SONS, INC., d/b/a KNIFE
RIVER, an Oregon corporation,

Plaintiff-Cross Respondent,

v.

L222-1 ID SUMMERWIND, LLC, a Nevada
limited liability corporation,

Defendant-Cross Appellant,

v.

IDAHO GOLF PARTNERS, INC.,

Intervenor-Respondent-Cross
Appellant.

CONGER MANAGEMENT GROUP, INC., an
Idaho corporation,

Plaintiff- Counterdefendant- Cross
Defendant-Respondent,

v.

STANLEY CONSULTANTS, INC.,

Defendant-Counterclaimant-Cross
Claimant-Appellant,

and

INTEGRATED FINANCIAL ASSOCIATES,
INC., a Nevada corporation,

Defendant-Counterdefendant-
Cross Defendant-Respondent-Cross
Appellant,

and

GENEVA EQUITIES, LLC, an Idaho limited
liability company; TRADITIONAL

ORDER GRANTING MOTION TO
AUGMENT THE CLERK'S RECORD

Supreme Court Docket No. 40514-2012
Canyon County Nos. 2008-4251
(2008-4252) (2008-1132)

SPRINKLERS AND LANDSCAPING, INC.,)
 an Idaho corporation; DENNIS PHIPPS WELL)
 DRILLING, INC., an Idaho corporation; and)
 RIVERSIDE, INC., an Idaho corporation,)
)
 Defendants-Counterdefendants-)
 Cross Defendants-Respondents,)
 and)
)
 IDAHO GOLF PARTNERS, INC.,)
)
 Intervenor-Respondent-Cross)
 Appellant.)
)

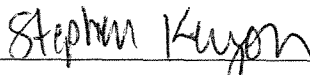
A MOTION TO AUGMENT THE CLERK'S RECORD was filed by counsel for Respondent Integrated Financial Associates, Inc. on November 13, 2013. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent Integrated Financial Associates, Inc.'s MOTION TO AUGMENT THE CLERK'S RECORD be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

1. Order on Defendant IFA's Second Motion for Reconsideration and Plaintiff's Second Motion for Summary Judgment, file-stamped December 23, 2011.

DATED this 19 day of November, 2013.

For the Supreme Court



 Stephen W. Kenyon, Clerk

cc: Counsel of Record

FILED
AM 4:02 PM
DEC 23 2011
CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HAP TAYLOR & SONS, INC. d/b/a KNIFE RIVER, an Oregon corporation doing business as Knife River,

Plaintiff,

vs.

L222-1 ID SUMMERWIND, LLC, an Idaho limited liability company, et al.,

Defendants.

AND Two other Consolidated Actions.

**ORDER ON DEFENDANT
IFA'S SECOND MOTION FOR
RECONSIDERATION AND
PLAINTIFF'S SECOND
MOTION FOR SUMMARY
JUDGMENT**

CV-2008-4251-C

CV-2008-4252
CV-2008-11321

OVERVIEW

These actions involve claims for priority and foreclosure of certain liens, filed by mechanics and material suppliers, mortgages, and deeds of trust in connection with a subdivision/golf course development ("Summerwind") on real property in Canyon County, Idaho. Presently before the court are: (1) Defendants' Integrated Financial Associates, Inc.,

**ORDER ON DEFENDANT IFA'S SECOND MOTION FOR RECONSIDERATION and
PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT**

COPY

Geneva Equities, LLC, and certain associated defendants (collectively, "IFA"), second motion for reconsideration of that portion of this court's April 13, 2010 Order; and (2) Plaintiff Knife River's Second Motion for Summary Judgment.

The motions came before the court for hearing on November 15, 2011. Ms. Rebecca A. Rainey appeared on behalf of IFA and Mr. David T. Krueck appeared for Knife River. At the conclusion of the parties' arguments, the court reserved ruling on the motions.

IFA'S MOTION FOR RECONSIDERATION

In its Second Motion for Reconsideration, IFA "requests that this Court reconsider the application of Idaho Code Section 45-508 to the improvements constructed by Knife River, and specifically (i) that portion of its order interpreting the word "other improvements" as that phrase is used in Idaho Code Section 45-508, and (ii) that portion of its order wherein it found that the improvements constructed by Knife River were "improvements to the land" that "attach to the property benefitted by its labor and materials, as opposed to any identifiable building, structure, or other improvement."

I. Legal Standard

I.R.C.P. 11(a)(2)(B) authorizes a motion for reconsideration of any interlocutory order of the trial court any time before entry of final judgment. On a timely motion for reconsideration, the court must consider new evidence that bears on the correctness of an interlocutory order if requested by the moving party. *PHH Mortgage Services Corp. v. Perreira*, 146 Idaho 631, 635, 200 P.3d 1180, 1184 (2009). Whether to grant or deny a motion for reconsideration is a discretionary determination for the trial court. *Van v. Portneuf Medical Center*, 147 Idaho 552,

ORDER ON DEFENDANT IFA'S SECOND MOTION FOR RECONSIDERATION and PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT

560, 212 P.3d 982, 990 (2009). When making a discretionary determination, the court must:

- (1) perceive the issue as discretionary; (2) act within the outer boundaries of its discretion; and
- (3) reach its decision by an exercise of reason. *Id.*

II. The April 13, 2010 Order

In its April 13, 2010 Order, this court addressed a number of motions, including IFA's Motion for Summary Judgment seeking a determination that Knife River's lien is subordinated to all other liens on the property pursuant to Idaho Code Section 45-508.

As the moving party, IFA had the burden of proving that "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c); *Farm Bureau Ins. Co. of Idaho v. Kinsey*, 149 Idaho 415, ___, 234 P.3d 739, 742 (2010). As a general rule, if reasonable minds could reach different conclusions on the evidence presented, the court must deny the motion. *Id.* However, where the case will be tried without a jury, the district court, as the trier of fact, may draw the most probable inferences from the undisputed evidence properly before it and grant summary judgment, despite potentially conflicting inferences from the evidence. *Id.* A claim for foreclosure of a mechanic's lien is an equitable one in which neither party is entitled to a jury trial. *Lus v. Pecararo*, 41 Idaho 425, ___, 238 P. 1021, 1022 (1925). Accordingly, the court would be the trier of fact in any trial on Knife River's lien foreclosure claim.

**ORDER ON DEFENDANT IFA'S SECOND MOTION FOR RECONSIDERATION and
PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT**

In its Motion for Summary Judgment, IFA asserted that Idaho Code section 45-508 applies to Plaintiff's lien claims because Plaintiff's lien encompasses more than one parcel of property improved by the labor and materials that form the basis for its lien.

After analyzing Idaho Code sections 45-508, 45-501, and 45-505, this court concluded that IFA's assertion was not supported by the express language of the statutes:

Pursuant to its express terms, Section 45-508 applies when one claim of lien is filed against two or more buildings, mines, mining claims, or other improvements owned by the same person. The parties disagree regarding whether the individual properties benefitted by Plaintiff's labor and materials constitute "other improvements" for purposes of the statute. The court concludes that the express language of the statute, given its plain and ordinary meaning, does not support IFA and Geneva's assertion that the term "other improvement" includes separate parcels of property improved by Plaintiff's labor and materials. There is no indication, in either Section 45-508 or the other provisions in Chapter 45, that the legislature intended the term "improvement" to be synonymous with parcels of property. In fact, the structure of Chapter 45 itself is not consistent with IFA and Geneva's contention.

For the purposes of applying Section 45-508, Idaho Code Section 45-501 identifies essentially two distinct types of lien. First, Section 45-501 allows a "person performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure . . . a lien upon the same." Second, Section 45-501 accords a person "who grades, fills in, levels, surfaces, or otherwise improves any land . . . a lien upon the same." In doing so, the legislature effectively created a distinction between liens that attach to mining claims, buildings, and other identified improvements to real property and liens that attach to the property itself, by virtue of the claimant improving the property. Idaho Code Section 45-505 recognizes this distinction by expressly making the property upon which a building, improvement, or structure is constructed subject to the lien on the building, improvement, or structure, if certain conditions are satisfied. If improved property were the equivalent of a building or improvement, for purposes of applying the provisions of Chapter 45, there would be no need for Section 45-505. [FN1]

FN1. The court also finds that this conclusion is in accord with both existing Idaho Supreme Court precedent, *BMC West Corp. v. Horkley*, 144 Idaho 890, 893, 174 P.3d 399, 402 (2007) ("In Idaho, the right exists in I.C. §§ 45-501 and 505. Section 45-501 states in relevant part that '[e]very person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of

any . . . building . . . or any other structure . . . or who . . . improves any land . . . has a lien upon the same for the . . . materials furnished . . .”), and California precedent. Since Idaho’s lien statutes appear to have been adopted from California’s, *Id.*, 144 Idaho at 896, 174 P.3d 405, the court finds it proper to refer to California precedent in interpreting the Idaho statutes. The Supreme Court of California, in *Warren v. Hopkins*, 110 Cal. 506, 510-511, 42 P. 986, 987-988 (1895), recognized the identical distinction between types of lien under the laws of California: “Section 1191 gives to the contractor a lien upon the ‘lot’ for his work done, while Section 1183 give him a lien upon the ‘building or other improvement. And in *Davis v. McDonough* (Cal.) 42 Pac. 450, the ‘improvement’ upon which a lien is authorized by section 1183 is held to refer to the objects enumerated in that section upon which the labor was performed, or for which the materials were furnished. . . . ‘While section 1188 requires the claimant who files a lien against two or more buildings, or other improvements, to designate the specific amount for which he claims a lien upon each of such improvements, it does not require him to make such designation unless there is in fact a specific ‘amount due to him’ on each of such improvements . . .’ while the grading had the effect to improve the land, it did not constitute such ‘improvements’ to the different blocks as are contemplated in section 1188, or for which separate liens were authorized.”

Based upon the evidence before it, the court can only conclude that Plaintiff’s liens are upon the property benefitted by its labor and materials, as opposed to any identifiable building, structure or other improvement. Accordingly, Plaintiff’s lien is not subject to Idaho Code Section 45-508.

III. IFA’s Motion

On the instant motion for reconsideration, IFA does not disagree with the court’s conclusion that section 45-508 does not apply to an improvement encompassing more than one parcel of property, as opposed to multiple improvements on the same parcel of property. Instead, on the instant motion, IFA makes an entirely new argument. Specifically, IFA now contends that: (1) the court erred in concluding that Knife River’s lien attached to the property, rather than to an “improvement,” as that term is used in section 45-508; (2) because Knife River constructed two improvements - roads and a cart path - on the subject property, it was required to designate

ORDER ON DEFENDANT IFA’S SECOND MOTION FOR RECONSIDERATION and PLAINTIFF’S SECOND MOTION FOR SUMMARY JUDGMENT

the amounts due on each such improvement its claim of lien pursuant to section 45-508; and (3) since Knife River failed to so designate the amount due on each improvement, its lien is postponed to IFA's deeds of trust pursuant to section 45-508.

IV. Determination

After consideration of the evidence in the record, and the arguments adduced by IFA on the instant motion, the court adheres to its original determination in the April 13, 2010 Order. The court will briefly address each of the above issues raised by IFA.

A. "Improvement," Pursuant to Section 45-508

Idaho Code section 45-508 provides:

In every case in which one (1) claim is filed against two (2) or more buildings, mines, mining claims, or other improvements, owned by the same person, the person filing such claim must, at the same time, designate the amount due him on each of said buildings, mines, mining claims, or other improvement; otherwise, the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens by judgment, mortgage, or otherwise, upon either of such buildings, or other improvements, or upon the land upon which the same are situated.

Section 45-508 "provides a lien claimant the benefit of filing a single lien covering multiple improvements under common ownership, but, in order to maintain priority, the lien claimant must designate the amount owing as to each improvement." *Hopkins Northwest Fund, LLC v. Landscapes Unlimited, LLC*, 2011 WL 5142054, p. 4 (2011).

In its April 13, 2010 Order, this court determined that section 45-508 did not apply to Knife River's lien, because Knife River's lien attached to the property, rather than to any specific improvement or improvements on the property. IFA asserts that the court erred in this conclusion

**ORDER ON DEFENDANT IFA'S SECOND MOTION FOR RECONSIDERATION and
PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT**

and that Knife River's lien covers multiple "improvements," within the meaning of section 45-508, in the form of the roads and cart path installed by Knife River on the property. Resolution of this issue requires the court to determine the proper application of Idaho Code Section 45-508 to the undisputed facts before it.

The application and interpretation of a statute are pure questions of law for the court. *Callies v. O'Neal*, 147 Idaho 841, 847, 216 P.3d 130, 136 (2009). When interpreting a statute, the court's primary objective is to determine the legislature's intent in its enactment. *Id.* Thus, statutory interpretation begins with the express language of the statute. *Id.* If the statutory language is unambiguous, the court does not engage in statutory construction, but applies the statute's plain meaning. *Id.* Provisions of a statute should not be read in isolation, but must be interpreted in the context of the entire document. *Farber v. Idaho State Ins. Fund*, 147 Idaho 307, 310, 208 P.3d 289, 292 (2009). The statute should be considered as a whole and words should be given their plain, usual, and ordinary meanings. *Id.* The court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. *Id.*

"Although 'improvement' is not specifically defined in the lien law, such law has historically differentiated between improvements made on the land, such as buildings and structures, and work done to improve the land, itself, such as grading, filling in and leveling." *Hopkins*, 2011 WL 5142054 at 4. Specifically, the first portion of Idaho Code section 45-501 grants a lien upon a "mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure," in favor of a person who performs labor upon it or furnishes materials to be used in its construction,

**ORDER ON DEFENDANT IFA'S SECOND MOTION FOR RECONSIDERATION and
PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT**

alteration or repair. In furtherance of this provision, section 45-505 subjects the "land upon which or in connection with which any professional services are performed or any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment," to the lien under specified circumstances. Accordingly, the express language of sections 45-501 and 45-505, when read together, indicates that a person granted a lien on any building, structure, or other improvement (in the form of a mining claim, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power – the other lienable items listed in the first part of section 45-501) also has a lien on some or all of the land upon which the building, structure, or other specified improvement is located. However, if the person granted such a lien files one claim of lien against two or more such "buildings, mines, mining claims or other improvements, owned by the same person," the person must designate the amount due on each in order to maintain priority as against other liens.

As the California Supreme Court stated, in *Davis v. MacDonough*, 109 Cal. 547, 550-51, 42 P. 450, ___, (1895)¹:

It must always be borne in mind that the remedy of a mechanic's lien is purely of statutory creation, and that the statute which creates the remedy *551 prescribes, not only the mode of its enforcement, but also designates the objects upon which the laborer may have a lien for his labor. Section 1183 enumerates as the objects for which a lien may be enforced, "any building, wharf, bridge, ditch, flume, aqueduct, tunnel, fence, machinery, railroad, wagon road, or other structure," and the labor for which a lien is given must be performed "in the construction, alteration, addition to, or repair" of these objects, or one

¹ As this court noted in its April 13, 2010 Order, since Idaho's lien statutes appear to have been adopted from California's, *BMC West Corp. v. Horkley*, 144 Idaho 890, 893, 174 P.3d 399, 402 (2007), the court finds it proper to refer to California precedent in interpreting the Idaho statutes.

of them. In a subsequent portion of the same section these enumerated objects are grouped into "building or other improvement," and in subsequent sections they are designated as "building, improvement, or structure." It is thus evident that the term "improvement," as used in section 1187, is intended to embrace the several enumerated objects in the beginning of section 1183 other than "building" and "structure."

Since the roads and cart path installed by Knife River can't be fairly characterized as a building and are not mining claims, wharves, bridges, ditches, dikes, flumes, tunnels, fences, machinery, railroads, wagon roads, or aqueducts to create hydraulic power, IFA is necessarily asserting that they constitute "structures" within the meaning of section 45-501. While it is not out of the question that the roads and cart paths could be characterized as structures, for purposes of the relevant statutes, as the court noted in its prior Order, there is another possibility.

Section 45-501 also establishes a lien on land in favor of any person "who grades, fills in, levels, surfaces or otherwise improves" that land. In its April 13, 2010 Order, the court determined that the work giving rise to Knife River's lien claim in this case was entirely consistent with surfacing or "otherwise improving" the land which is the subject of its claim of lien. As the court noted in its October 26, 2010 Order on IFA's first Motion for Reconsideration:

Attached to the Rosin Affidavit is a copy of a "Proposal," dated June 26, 2006, to ELC for the Project designated as "Summer Wind @ Orchard Hills, Ph. 1&2." The Proposal also includes the following:

BID REFLECTS:

1) Place and compact 3" of CL III ISPWC Plant Mix.

Approximately 6,020 TON @ \$64.50 \$388,290.00

Billing to be based on actual tonnage.

**ORDER ON DEFENDANT IFA'S SECOND MOTION FOR RECONSIDERATION and
PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT**

Aggregate base for paving to be checked for stability and any soft spots to be repaired before Masco arrives to pave.

All items on this proposal requiring hot plant mix asphalt are based on projected liquid cement cost of \$400.00 per Ton, FOB supplier. Masco retains the exclusive right to honor the quoted price, in the event that oil prices escalate to a level above the quoted price. By accepting this proposal, in this form or any other, the customer agrees to pay Masco for extra costs at Masco's discretion.

Masco shall be paid for actual quantities installed. Payment is due upon progress billings each 30 days. The amount due shall bear interest at the highest rate allowed by law from date of billing.

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to the specifications and standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon . . .

The Proposal is signed by Mr. Rosin and bears an "Authorized Signature" accepting the Proposal upon the stated terms.

The court concludes that the work described in the Proposal is best characterized as surfacing and/or improving the subject real property, as opposed to the construction of a structure or structures on the property.

In light of this, the court adheres to its determination in the April 13, 2010 Order that section 45-508 does not apply to Knife River's lien.

B. Multiple Improvements

Even if the court were to find that the roads and cart path Knife River installed on the property constitute "structures," for purposes of Idaho Code section 45-501, and, therefore, "improvements," for purposes of section 45-508, the evidence does not support the conclusion

**ORDER ON DEFENDANT IFA'S SECOND MOTION FOR RECONSIDERATION and
PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT**

that the roads and cart path constitute two or more improvements, for purposes of section 45-508.

As the Idaho Supreme Court stated in *Hopkins*, “[E]ven if we were to accept Hopkins’ premise that LU’s work on the land constituted an improvement within the meaning of section 508, such work did not constitute multiple improvements as required to trigger the designation requirement of section 508. LU’s work was done pursuant to a single contract, and the labor and materials provided were for the benefit of the entire golf course and driving range, rather than for the individual improvements making up the golf course. Therefore, the golf course project is more properly characterized as a single improvement.” 2011 WL 5142054 at p. 7. “HPGC executed a contract with LU for the ‘[c]onstruction of all project components for an eighteen-hole golf course and practice range.’ There were not separate contracts created for each of the eighteen holes, and there was no separate contract for the driving range. Instead, the parties entered into a single contract for the construction of one final product and, accordingly, anticipated payment for that product as a whole. Therefore, Hunter’s Point Golf Course is appropriately characterized as a single improvement such that the segregation principles of section 508 would not apply.” *Id.* at p. 8.

In its October 26, 2010 Order on IFA’s first Motion for Reconsideration, this court extensively analyzed the evidence adduced by IFA on its claim that there were two contracts between Knife River and Extreme Line Logistics. As the court stated:

As a general rule in Idaho, a lien claimant seeking to recover on a claim to foreclose that lien must “establish that it furnished the material to the contractor under one continuous contract with him, and that the lien was filed within the statutory time after furnishing the material.” *Valley Lumber & Mfg. Co. v. Driessel*, 13 Idaho 662, __.

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93 P. 765, 771 (1907) (On Petition for Rehearing). "Where materials are furnished for the same building or improvement in installments and at intervals, and the parties intend them to be included in one account in settlement, the entire account will be treated as a continuous and connected transaction, and the lien limitation begins to run from the last item of the account." *Valley Lumber*, 13 Idaho at ___, 93 P. at 768.

The court concludes that the evidence before it is both consistent with the existence of a single agreement between ELL and Knife River and, more importantly in the context of Knife River's motion for summary judgment, not sufficient to support a determination that ELL and Knife River entered into different contracts for paving the streets and cart paths in Summerwind.

Also relevant on this issue is the testimony of Casey Daniels, ELL's President at the time of the project, regarding the existence of two contracts between ELL and Union Land, the owner of the property, cited in the court's October 26, 2010 Order:

In fact, Daniels testified that the only reason for the existence of two contracts between ELL and Union Land was Union Land's delay in finalizing plans for the golf course:

Q: Explain to me why there were two contracts for the one project, if you know.

A: When we originally started this thing we were doing the streets and then we were doing whatever we could on the golf course. My original contract was I had plans for the roads in the subdivision, so that is all I could bid.

They were still a little vague on exactly what they were doing with the golf course. In fact, I think they were trying to go through a couple different golf course designers, guys had different ideas. And it just – they weren't, Union Land wasn't organized. They were too busy trying to be con artists, but they just weren't organized. They didn't know what they really wanted to do. So I didn't have the ability to bid everything at once.

Q: So the first contract you entered into with Union Land was –

A: I wasn't going to start the project without a contract, so I did what I could to get a contract rolling. If I would have had all the plans right there, everything would have been one contract.

Tr. 44:9 – 45:7. Based on this testimony, the court has no basis for inferring that Daniels had any reason to inform Knife River that ELL had separate contracts with Union Land for paving the streets and cart paths.

Daniels' testimony indicates that there was no obvious separation between his work on the subdivision and his work on the golf course:

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Q: I want to get an understanding from you of the scope of the Summerwind project. I understand that this project was done in two phases. There was a Phase 1 and a Phase 2; is that correct?

A: Not really.

Q: Explain to me why you say "not really."

A: Well, they went in and said Phase 1 and Phase 2, but there was something with the permits is why they did that. But we did Phase 2 first and then we did Phase 1 second. There weren't two phases; it was one phase.

Q: ... My question was: Was there a break between when you did Phase 2 and Phase 1?

A: No.

Q: So is it your testimony then that Phase 1 and Phase 2 were really done basically at the same time?

A: Yes.

Q: Was there a break between when you did Phase 1 and 2 and when the golf course was done?

A: Nothing ever got done, by the way. It's still not done. But there was never a break for anything.

A: To me Summerwind is a subdivision and a golf course.

Q: Two separate things?

A: A subdivision and a golf course as one. When I tell my guys to go to Summerwind, they went to the golf course and the subdivision.

Tr. 19:4 – 22:15. (emphasis added).

Based on the foregoing, IFA has failed to demonstrate that Knife River's claim of lien was filed against two or more improvements, within the meaning of section 45-508.

V. Conclusion

Based on the foregoing, IFA's Second Motion for Reconsideration of this court's determination that IFA is not entitled to summary judgment determining that Knife River's liens are postponed to IFA's deeds of trust, pursuant to Idaho Code section 45-508, is denied.²

² Although neither party raised the issue on this motion, the court also notes that it is not clear that section 45-508 would operate in favor of IFA's deeds of trust. Pursuant to section 45-508, a lien filed without the proper designation "is postponed to other liens." Pursuant to Idaho Code section 45-1513, a deed of trust is a conveyance of real property, rather than a lien.

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PLAINTIFF'S SECOND MOTION FOR SUMMARY JUDGMENT

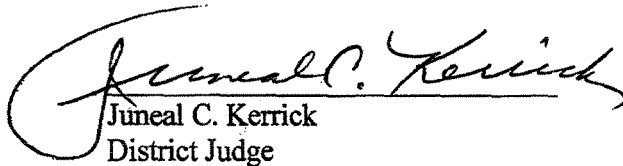
Knife River moves for summary judgment "finding that Plaintiff is entitled to foreclose its Claims of Lien against the subject property for the amount secured by said Claims of Lien." Plaintiff has adduced prima facie evidence that the principal amount due is \$198,928.53.

The only opposition to Plaintiff's Motion is IFA's contention that an issue of fact remains regarding the amount of land subject to the lien, pursuant to Idaho Code section 45-505. However, in light of the court's determination on IFA's Second Motion for Reconsideration, the court concludes that Idaho Code section 45-505 does not apply to Plaintiff's lien.

Accordingly, Plaintiff's Second Motion for Summary Judgment is granted.

IT IS SO ORDERED.

Dated this 23rd day of December, 2011.


Juneal C. Kerrick
District Judge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served upon the following, either by U.S. Mail, first class postage prepaid; by courthouse basket; by hand delivery; or by facsimile copy:

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Dated this 23 day of December, 2011.

CHRIS YAMAMOTO
Clerk of the District Court

By: 
Deputy Clerk

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